IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5448,5440,5481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GIRISHKUMAR MANSUKHLAL VORA

Appearance:

1. Special Civil Application No. 5448 of 1999

MS DS PANDIT AGP for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/09/2001

COMMON (ORAL) JUDGEMENT

Heard Ms.D.S.Pandit learned AGP for the petitioner - State and Mr. Y.S.Lakhani learned advocate appearing for the respondent.

2. This Hon'ble Court has issued rule in Special Civil Application No. 5448 of 1999 on 27.8.1999 and similarly, in Special Civil Applications Nos. 5481 of 1999 and 5440 of 1999 on 23.11.1999 respectively.

3. In all these three petitions, the petitioner State of Gujarat has challenged the order dated 26.3.1999 passed by the Urban Land Tribunal in respect to Review Appeals Nos. 23 of 1998, 21 of 1999 and 22 of 1999.

4. In respect of Special Civil Application No.5448 of 1999, the order has been passed by the Urban Land Tribunal by exercising the powers under Section 33 of the Urban Land Ceiling Act. The present respondent has filed an application challenging the orders passed by the Competent Authority dated 26.7.1988 and 29.9.1995.

The brief facts of the present petitions are that the Madhusudan Oil Mill is the partnership firm having different partners and they filled up the Form under Section 6(1) of the Urban Land Ceiling Act, wherein considering the Survey No.330/1, Plot No.6, for 1016.20 sq.mtrs.lands and Survey No.331/2, Plot No.7, for 1047.80 sp.mtrs.land which in all comes to 2465 sq. mtrs. land was declared as excess land. In the present case, the Competent Officer after processing the aforesaid Form, passed the order under Form 6(1) on 31.3.1980 to the effect that partnership firm is not holding any excess land and therefore case is ordered to be filed. Thereafter, the case was taken into consideration by the State Government under Section 34 of the Act, by his order dated 14.3.1988, being Order No. ULC/3484/600-678/93, and by the said order, total 2465.00 sq. mtrs. lands of the firm one unit land and 965 sq. mtrs. land was declared as excess land from the one unit only and as per the said order the Competent Officer, Rajkot was directed to do the process in the matter as per provisions of the Act and Competent Officer, Rajkot by an order dated 26.7.1988 in respect to lands of Rajkot Survey No.330/1 and 331/2 of Plots Nos. 6 and 7 respectively, declared 965.00 sq. mtrs. lands was declared as excess land and on that basis, a final statement under Section 9 of the Act was also published and by this statement, 747.03 sq. mtrs. lands of Rajkot Survey No.330/1 paikee Plot No.6 and 217.97 sq. mtrs.. lands of Rajkot Survey No.331/2 paikee Plot No.7 was declared excess land and thereafter, under the provisions of Section 10(5) and under Section 11 of the Act, process regarding fixing compensation for the same has been done. So, the Revenue Department of the Government while exercising the powers under Section 34 of the Act had

passed the order dated 14.3.1988 declaring 965 sq. mtrs.. as excess land. In pursuance to the order passed by the Competent Officer dated 31.3.1980 declared that Firm's no land is required to be declared as excess lands and on that basis, the case was ordered to be filed and as per order of the Competent Officer dated 17.10.1080, the partners of the partnership firm have dissolved their partnership firm and the partnership firm has been closed and the possession of the different partner's share/lands have been taken as per the dissolution of the partnership firm documents and looking to the records of the case, 884/6 sq. mtrs.. lands of Plot No.6 have come into the share of the present respondent. The Competent Officer, before passing the order dated 26.7.1988, has not heard the present respondent and not considered the partnership deed and without considering the objections raised by the respondent and without giving any opportunity to the partners, the order has been passed by the Competent Officer on 29.9.1995. That order was challenged by the petitioner - State Government under Section 33 before the Urban Land Tribunal.

5. I have perused the order passed by the Urban Land Tribunal dated 26.3.1999 and the order passed by the Competent Officer dated 26.7.1988 which has been amended by subsequent application filed by Madhusudan D. Donga on 28.9.1995 and immediately on the next date i.e. on 29.9.1995, the Competent Officer has amended the order which has been adversely affected the rights of the respondent and no opportunity of hearing was given to the respondent, and this aspect has been considered by the Tribunal and ultimately, the Tribunal has set aside both the orders dated 26.7.1988 and 29.9.1995 and remanded back the matter to the Competent Officer with a direction to take decision afresh in respect to lands in question and further directed that finding of the Civil Suit No. 1559 of 1995 will govern the right of the concerned parties.

6. I have heard Ms. D.S.Pandit learned AGP appearing for the petitioner - State. Ms. Pandit learned AGP has submitted that the Tribunal has committed gross error in passing the impugned order which requires interference of this Court.

Mr. Y.S.Lakhani learned advocate for the respondent has filed affidavit in reply of one Mr.Prakashbhai D. Vora which has been taken on record.

As against that, Mr. Lakhani learned advocate for the respondent has submitted that Tribunal has

considered the fact of dissolution of the partnership firm and also on the relevant time, the Competent Officer has filled in Form No.6(1) considering the fact that the firm is not having excess land and thereafter, after 8 years by exercising the powers under Section 34, the State Government has passed another order dated 26.7.1988 declaring surplus land of 965 sq. mtrs. in respect to land in question. Thereafter, one partner Shri Madhusudan D. Donga filed an application on 28.9.1995 which was considered by the Competent Officer on the next date without giving any opportunity to the respondent, whose right has been adversely affected by amended order. Therefore, according to my opinion, the Urban Land Tribunal has rightly considered the issue and set aside both the orders dated 26.7.1988 and 29.9.1995 and remanded back the matter to the Competent Officer. Therefore, Mr. Lakhani learned advocate for the respondent has stated that no error has been committed by the Tribunal which require no interference of this Court.

7. I have considered the submissions urged by learned advocates for the parties. After perusing the entire order; the reasons which has been given by the Urban Land Tribunal; the dissolution of the partnership firm; the order passed by the Competent Officer dated 17.10.1988; the order dated 26.7.1988 and thereafter, the amended order which has been passed by the Competent Officer in respect to the application dated 28.9.1995 submitted by one Shri Madusudan D. Donga, one of the partner without giving any opportunity to concerned partners or affected persons and thereafter, the Tribunal has rightly considered the matter and no error has been committed by the Tribunal and therefore according to my opinion, no interference of this Court is required and therefore Special Civil Application No. 5448 of 1999 is required to be dismissed.

8. So far as other two petitions i.e. Special Civil Application Nos. 5481 of 1999 and 5440 of 1999 are concerned, the petitioner - State of Gujarat has challenged the order passed by the Urban Land Tribunal in Review Appeals Nos 21 of 1999 and 22 of 1999 dated 26.3.1999 respectively. Ms.D.S.Pandit learned AGP has submitted that the Tribunal has committed gross error in remanding back the matter to the Competent Authority, Rajkot to decide the same afresh after giving the the opportunity of hearing to the appellant and to process with regard to issue as discussed in both the appeals. Ms.D.S.Pandit learned AGP has further submitted that the Tribunal has committed gross error in passing such orders and therefore interference of this Court is necessary.

9. Mr. Lakhani learned advocate for the respondent has pointed out that the Item No.3 in Page No.14 relates to the Survey No.330/1 wherein total land shown as 93.75 sq. mtrs. which has been taken into consideration while granting unit in favour of the individual person. Mr. Lakhani has also pointed out that this very land belonging to Survey No. 330/1 which has been taken into the account while declaring excess land by an order dated 26.7.1988 as 965 sq. mtrs.. which amounts to duplication of the land in question. However, he submitted that the reasons given by the Tribunal is correct and no interference of this Court is required.

10. I have considered the submissions advanced by learned advocates for both the parties and considering the fact that original land holder Kantilal Premchand Vora had filled in prescribed Form No.1 under Section 6(1) of the U.L.C.Act and presented the same in the office of the Competent Authority. The Competent Authority, Rajkot had allowed the father of the petitioner to retain the land of 1500 sq. mtrs.. as an unit, out of total 1852.59 sq. mtrs.. of land declared by him and held that balance of 283.19 sq. mtrs.. of land to be declared as excess vacant land. Against the aforesaid order, the land holder had filed an appeal being Rajkot/65/85 before the Urban Land Tribunal which was rejected by the Tribunal by an order dated 28.4.1986. The present respondent is the son of appellant - original land holder and the xerox copy of the Form No.1 is produced before the Tribunal by original land holder. After perusal of the said form, the Tribunal has find that form is filled up in the capacity of the family and there was also mention as house and residence and therefore question was raised by the Tribunal that this properties is HUF properties or not. In reply to this question, Tribunal has observed that it is necessary to examine that issue also and considering the decision in the case of Mira Gupta Vs. State of West Bengol, the constructed property is required to be excluded and this contention was raised by the petitioner before the Tribunal which has been accepted by the Tribunal and it is also considered by the Tribunal that the Competent Authority has not considered the question whether the property belongs to HUF or not. This question is required to be answered by the Competent Authority and therefore considering all these aspects, the Tribunal has allowed the appeal partly and set aside the order passed by the Competent Authority, Rajkot on 29.6.1985 with a remand order to the Competent Authority to decide the same afresh after giving the opportunity to the

petitioner.

11. I have perused the order passed by the Tribunal and in respect to the Appeal No.22 of 1999 in which the similar question was considered by the Tribunal and the Tribunal has set aside the order dated 29.6.1985 passed by the Competent Authority, Rajkot and remanded back the matter to the Competent Authority. In Appeal No.22 of 1999 the Tribunal has also considered the record available with the Tribunal that original land holder Shri Dhirajlal Premchand Vora had produced Form No.1 in the office of Competent Officer and by order dated 29.6.1985, the Competent Authority has decided to give one unit of land of 1500 sq. mtrs.. as applicable available land and remaining 276.54 sq. mtrs.. of land of Plot No.69 of Survey No.156 of Rajkot is declared as excess vacant land. The Tribunal further observed in its judgement that in Form No.1 which has been filled in by the petitioner in his capacity of a family and looking to the school leaving certificates produced, the birth date of Vora Nareshkumar is 20.2.1955, birth date of Vora Prakash Dhirajlal is 16.11.1957 and considering the xerox copy of the filled up form of the land holder, there was mention about house at Sr. No.5 and 7 in para.7 and also in Sr. Nos. 6 and 7 in para.9 of the supplementary para.C. Therefore, the Tribunal has observed that there was evidence in relation to the constructed properties before the implementation of the Act and it is necessary to have inquiry whether the said property are HUF or not and if the properties are constructed before the implementation of the Act then there are judgments of the Hon'ble Apex Court in the case of Mira Gupta (supra), and the deduction is required to be given to the petitioner. Therefore, considering this fact the Tribunal has allowed the appeal partly and order passed by the Competent Officer has been set aside by remanding back the matter to the Competent Authority, Rajkot.

12. I have perused both the orders passed by the Tribunal. The Tribunal has given detailed reasons in support of his conclusion and considering the fact that whether the property is belonging HUF or not, that question kept open and the same has not been examined by the Competent Authority. The Competent Authority has not examined whether the prior to implementation of the Act constructed area has not been deducted. Therefore, according to my opinion, Tribunal has not committed any error while allowing the appeal filed by the petitioner remanding back the matter to the Competent Officer, Rajkot. Therefore, there is no error committed by the Tribunal which require no interference of this Court by

exercising the powers under Articles 226 and 227 of the Constitution of India.

13. In all these petitions, the another aspect is required to be kept in mind that in all these matters, the concerned Tribunal has passed the order on 26.3.1999 and has set aside the orders passed by the Competent Authority, Rajkot and remanded back the matter to the said Authority and directed to decide afresh. But, thereafter on 1.4.1999 the ULC Repeal Act has come into force. Therefore, now there is no authority available to examine the said issue as the petitions which have been filed subsequent to the Repeal Act and therefore also, according to my opinion, all these three petitions are not maintainable. All these three petitions stand disposed of having no substance. Rule is discharged with no order as to costs. Interim relief, if any, granted earlier stands vacated.

(H.K.Rathod,J.)
(vipul)